

STATE OF RHODE ISLAND

COMMISSIONER OF EDUCATION

DEPARTMENT OF CHILDREN,  
YOUTH AND FAMILIES

*Petitioner*

v.

Case No. 19-015P

BURRILLVILLE SCHOOL DEPARTMENT

*Respondent*

### **Decision and Order**

Held: As held in previous decisions, DCYF is statutorily entitled to be reimbursed at the school district's per-pupil special education cost for a student placed in a residential treatment facility, even if the student did not receive special education services.

Date: August 18, 2020

## **Introduction**

This matter concerns a request by the Department of Children, Youth and Families (“DCYF”) for a residency determination under R.I. Gen. Laws §16-64-1(c) for the purpose of assigning financial and educational responsibility for a child placed in a residential treatment facility.

## **Background**

The parties stipulated to the following facts:

- On November 15, 2017, C. Doe, a child in DCYF custody, was placed per order of the Family Court at the Walden Street School (“Walden”), located in Concord, Massachusetts;
- Walden is a private residential facility which includes the delivery of educational services;
- Doe was not and is not a child with a disability and is not entitled to special education services;
- At all relevant times, Doe’s custodial parent resided in Burrillville, Rhode Island;
- Petitioner provided Respondent with a written notice of responsibility for a child in state care with regard to Doe on or about November 9, 2017;
- Doe resided at Walden and received educational services there from November 15, 2017 to April 29, 2018, a total of 165 days in fiscal year 2018;
- Respondent’s statutory daily per-pupil special education cost for fiscal year 2018 is \$114.53 per day; its daily per-pupil general education rate is \$40.64 per day.
- Despite due demand, Respondent has refused to reimburse Petitioner for the educational services provided to Doe at Walden or to pay Walden directly at its per-pupil special education cost, arguing that Doe was not eligible to receive special education services.
- At all times, Respondent has been ready, willing, and able to educate Doe in a public school setting.

## **Positions of the Parties**

**Respondent:** R.I. Gen. Laws §16-64-1.1(c) does not give Petitioner or the Commissioner the authority to violate the federal Individuals with Disabilities Education Act (“IDEA”). Under IDEA, the state education agency must ensure that every child with a disability receive a free appropriate public education (“FAPE”) in the least restrictive environment (“LRE”). A state may

not adopt a special education funding mechanism which results in placements that violate the LRE requirement or deprives children of FAPE as detailed in an individualized educational program (“IEP”). Educational placement decisions must be made by an IEP team. Respondent is ready, willing and able to educate Doe in a public school setting which is a less restrictive environment than a residential facility such as Walden. Thus, IDEA mandates that Doe be educated in a public school setting which Respondent has designated as Burrillville High School.

Even if the LRE mandate of IDEA could be disregarded, the Commissioner cannot allow Petitioner to charge Respondent a special education rate for a child who neither has a disability nor requires special education services. The Commissioner misconstrued the reimbursement statute in *DCYF v. Newport School Department*<sup>1</sup> thereby stigmatizing children like Doe who have no disabilities in violation of Section 504 of the Rehabilitation Act and identifying students in DCYF care as disabled on a generalized basis in violation of IDEA. The Commissioner’s interpretation of the statute is discriminatory and makes an unlawful *per se* determination of special education eligibility.

**Petitioner:** Respondent is employing a new version of the discredited defense of asserting reliance on special education laws to avoid payment of the per-pupil special education cost for a child in a non-educational residential placement. Respondent’s arguments regarding FAPE and LRE were rejected by the Commissioner in *Department of Children, Youth and Families v. Foster-Glocester Regional School Committee (In Re: Student T.P.)*,<sup>2</sup> which is binding administrative precedent. It is the Family Court which is statutorily authorized to make placement decisions for children in DCYF care. School districts do not have any legal standing in these proceedings. The cases from other states cited by Respondent involve residential placements made by local education agencies and/or under different statutory schemes.

With regard to the payment of the per-pupil special education cost for this general education student, Respondent has not offered any Rhode Island law to controvert the interpretation of the statute made by previous Commissioners. Respondent offers a tortured analysis of §16-64-1.1(c) as opposed to the Commissioner’s well-reasoned statutory interpretation in *DCYF v. Newport*. Payment of the special education rate does not deny any student any benefits nor does it discriminate against them. It merely represents the Legislature’s recognition that the

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<sup>1</sup> RIDE No. 19-006A, March 8, 2019.

<sup>2</sup> RIDE No. 021-15, December 15, 2015.

cost to DCYF of providing general or special education services to youth like Doe regularly exceeds even the higher special education per-pupil rate. Respondent's arguments have previously been rejected by the Commissioner, as the statute simply creates a funding mechanism for the education of foster children placed at residential treatment facilities.

## **Discussion**

This case concerns a Family Court placement of a child without a disability in a residential treatment facility. Given the nature of the student and the placement, IDEA and its FAPE and LRE requirements are not applicable to the Family Court's action or Doe's educational services at Walden. Furthermore, shortly after the parties submitted post-hearing memoranda in this matter, the Commissioner issued her decision in *Department of Children, Youth and Families v. Pawtucket School Department (In Re: Student L.P.)*,<sup>3</sup> which involved another child without a disability placed at Walden per order of the Family Court. In that decision, the Commissioner rejected the arguments made by Respondent concerning the per-pupil special education cost and its alleged stigmatizing and discriminatory effects on children without disabilities. In a later decision, the Commissioner explained the "adjudicative rule" that has been established by repeated interpretations of §16-64-1.1(c) "to require districts to reimburse DCYF for the cost of educating children placed in private residential facilities at the district's statutory special education per-pupil rate even if the child is a general education student who is not eligible to receive special education services."<sup>4</sup> Because Respondent has not provided a substantial reason to depart from the previously established adjudicative rule, we adhere to the rule.

## **Conclusion**

Petitioner has established that Respondent is financially and educationally responsible for Student C. Doe. Petitioner's request for reimbursement of Respondent's per-pupil special education cost from November 15, 2017 to April 29, 2018 is granted. At \$143.53 per day for 165

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<sup>3</sup> RIDE No. 19-032A, November 5, 2019.

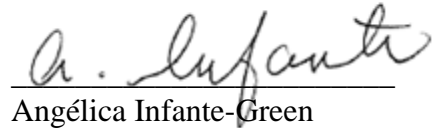
<sup>4</sup> *Department of Children, Youth and Families v. Burrillville School Department (In Re: Student S. Doe)*, RIDE No. 19-051K, February 12, 2020, p. 5. Also see *Department of Children, Youth and Families v. Warwick School Department (In Re: K. Doe)*, Case No. 18-096P; *Department of Children, Youth and Families v. Providence School Department (In Re: E. Doe)*, Case No. 18-104P; *Department of Children, Youth and Families v. Providence School Department (In Re: M. Doe)*, Case No. 18-105P; *Department of Children, Youth and Families v. Providence Public School Department (In Re: H. Doe)*, RIDE Case No. 19-036A and *Department of Children, Youth and Families v. Providence Public School Department (In Re: M.B. Doe)*, RIDE Case No. 19-041A, June 15, 2020.

days, Respondent is ordered to pay Petitioner \$23,682.45 forthwith. In lieu of full payment at this time, the parties may agree upon a reimbursement schedule. The Commissioner will retain jurisdiction of this case to ensure prompt implementation of the remedy ordered herein. A hearing to address any remedial issues is hereby scheduled for October 2 at 2:00 p.m.

/s/ Paul E. Pontarelli

Paul E. Pontarelli  
Hearing Officer

Approved:

A handwritten signature in cursive script, appearing to read 'A. Infante', is written over a horizontal line.

Angélica Infante-Green  
Commissioner

Date: August 18, 2020